

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

Criminal No.  
03-10289-WGY

BEFORE: The Honorable William G. Young,  
District Judge

## APPEARANCES:

GLENN A. MACKINLAY, Assistant United States Attorney, 1 Courthouse Way, Suite 9200, Boston, Massachusetts 02210, on behalf of the Government

SWOMLEY & ASSOCIATES (By John G. Swomley, Esq.  
And Eric Tennen, Esq.), 227 Lewis Wharf, Boston,  
Massachusetts 02110, on behalf of the Defendant

1 Courthouse Way  
Boston, Massachusetts

September 22, 2004

1                   THE CLERK: Calling Criminal Action 03-10289, the  
2                   United States v. Robert Coppola.

3                   THE COURT: Good afternoon. Would counsel  
4                   identify themselves.

5                   MR. MacKINLAY: Good afternoon, your Honor. Glenn  
6                   MacKinlay for the United States of America.

7                   MR. SWOMLEY: John Swomley for Robert Coppola, and  
8                   with me is Eric Tennen, an associate in my office.

9                   THE COURT: Good afternoon. And he's welcome.  
10                  And Mr. Coppola is present in the courtroom.

11                  Mr. MacKinlay, you were not the attorney who tried  
12                  this case, but I have read your post-trial submission.  
13                  It's very thorough. It's obvious you're familiar with the  
14                  record.

15                  Without in any way wanting to blindside any of the  
16                  arguments that Mr. Coppola may want to make, I want to  
17                  tighten this up by stating a matter of real concern to the  
18                  Court, on the sufficiency of the evidence, and I would  
19                  really like to hear you develop that because it's my major  
20                  concern.

21                  MR. MacKINLAY: Yes, your Honor.

22                  THE COURT: First, I've noted that you have argued  
23                  correctly that I gave a charge to the jury that in one  
24                  respect was more favorable to Mr. Coppola than the law  
25                  required. There was no objection to it. Query what rights

1 the government has under these circumstances. But, in any  
2 event, I acknowledge that it is not part of the  
3 government's burden to prove knowledge on the part of Mr.  
4 Coppola of the specific drug that is involved. That said,  
5 and taking all intendments in favor of the verdict, the  
6 same standard as I must do when I judge the record to see  
7 whether a motion should be allowed under Rule 29, my big  
8 problem is this. On this record how could it fairly be  
9 inferred that Mr. Coppola knew that Mr. Concepcion was  
10 himself involved in drug dealing, which seems to me vital  
11 to the government's case.

12 I recall during the trial and I raise the analogy  
13 again, I'm saying, well, it's not unlawful when you pass a  
14 police stakeout to flick your lights to oncoming traffic to  
15 tell them that the police have got a speed trap.

16 So, taking all intendments, he knowingly makes  
17 this call, he makes it to Concepcion, he says what he says,  
18 all of which we have on tape. But on this trial, now, I  
19 recognize that I'm presiding over this multi-count  
20 indictment, but on this trial where is the evidence that  
21 Coppola knew, he knew what he was doing, he knew what he  
22 was tipping off, but it seems to me the most, I'm not at  
23 this conclusion, I just want to set up your argument, it  
24 can be argued that the most the government has is that he  
25 was, he was tipping off someone. Concepcion wasn't running